

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Application of:

Donald K. Forest

Serial No.: 08/506,032

Filed: 24 July 1995

Title: DATA ENTRY METHOD  
AND APPARATUS

Group Art Unit:

2774

Examiner:

Regina Liang

Applicant Document Number:

032-37

Certificate of Mailing under 37 C.F.R. §1.8

I hereby certify that this Certificate of Mailing and the correspondence listed below are being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231, on

13 September 1999.

1. a 2 page Comment on Decision on Petition Filed under 37 CFR §1.181, Applicant Document No. 032-35;
2. three signed copies of a 199 page Appeal Brief, Applicant Document No. 032-36.

Donald K. Forest

Donald K. Forest

13 September 1999

Date of Signing

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GROUP 2700

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COMMENT

ON DECISION ON PETITION FILED UNDER 37 CFR §1.181

Honorable Commissioner of Patents and Trademarks

Washington, D.C. 20231

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Sir:

On 6 July 1999 Applicant petitioned the Commissioner under 37 CFR §1.181. On 16 August 1999 Mr. Gerald Goldberg, Director, Technology Center 2700, issued a Decision on the Petition. This Comment is filed in response to the Decision.

The Director states in the Decision on page 3, line 6 that item 4 of the Petition misrepresents the facts. This is incorrect. Each statement in that item is true. The Director concedes as much, stating "Granted the Ito reference was not applied against the claims in the February 24, 1997 action..." (Decision, page 3, lines 6-7). The Director then **infers** that Petitioner meant that Ito was first applied in the Final Action. It is clear from the prosecution history of this case that Ito was **not** first applied in the Final Action. Petitioner did not state or imply that it was.

The argument made in item 4 page 11 of the Petition is not one of new grounds of rejection, but of due process. Item 4 raises the question of whether the Examiner failed to fulfill her obligations under federal law by failing on **24 February 1997** to either (a) consider references submitted in an IDS, under 37 C.F.R. §1.197(b) and MPEP 707.05, or (b) cite against an application the best references known to the Examiner, under 37 C.F.R. §1.104(c)(2) and MPEP 904.02. Applicant made Ito of record in this Application simultaneously with filing the Application, i.e. Ito was of record on 24 February 1997. In the Office Action issued that day, the Examiner did not cite Ito. However, the

Examiner later found Ito to be among the best references, relying upon it as the primary reference in the Final Rejection. This raises the question: On 24 February 1997, did the Examiner, **both** consider Ito **and** cite against the Application the best references known to the Examiner? Since it is irrelevant to **this** inquiry that the Examiner cited Ito in both non-final and final office actions and reciting an irrelevant fact would potentially obfuscate the issue, this fact was omitted.

Applicant respectfully requests entry of this Comment into the record of this Application.

Respectfully submitted,



Donald K. Forest

Applicant

Date: 13 September 1999

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